

TOWN OF KENDALL  
ZONING BOARD OF APPEALS  
MEETING MINUTES

Tuesday, August 18, 2009 – 7:00 p.m.

CALL TO ORDER: Chairwoman Rowles called the meeting to order at 7:02 p.m.

ROLL CALL:           Pamela Rowles, chair           - present  
                          Kevin Banker                   - present  
                          Michael Hanlon               - absent  
                          Gay Smith                     - present  
                          Patrick Bolton               - present

ALSO PRESENT:    Larry Gurslin, Code Enforcement Officer  
                          Paul Hennekey, Code Enforcement Officer II  
                          Marianne Wilson, Recording Secretary

Paul Gray, Planning Board Chairman  
David Schuth, Town Board representative  
David F. Mayer, Town's legal representative  
Francine Fantuzzo, 16847 Bald Eagle Drive  
Charles Scroger, 2443 Kendall Road

UNFINISHED BUSINESS: Kevin Banker: Due to an improper procedural error made by the Zoning Board of Appeals for a use variance given to Mr. Donald B. & Lynne Short at 16821 Bald Eagle Drive, Tax ID 10.-1-9.3, on Tuesday, July 21, 2009, I make a motion to annul the approved use variance, application #09VAR06 for a 48 ft Wind Conversion Energy System in the Water Residential District. Seconded by Gay. Considerable discussion followed.

Some ZBA members feel it should have been a matter for the Planning Board. Kevin states there needed to be a use variance issued by ZBA first, citing Section 728 or the Ordinance. Paul Gray states that Mr. Short appeared before the Planning Board informally. He was advised at that time to begin with a use variance application. Site plan review and special use permit would be the Planning Board's jurisdiction. Kevin states that ZBA should have referred the Shorts to Orleans County Planning Board due to proximity to the Lake Ontario Parkway. Reference Sections 834 and 835.

Neighbor Francine Fantuzzo states she consulted her attorney in this matter, who advised her the matter should be set aside for other considerations. The town's attorney advised ZBA members to nullify the decision. Paul Gray says he met with Don Short. Francine further states that her attorney says the application cannot be heard a second time, by law, and therefore should be set aside. Attorney Mayer states that Mr. Short will have to reapply if he wishes to pursue the matter. Francine states that is counter to her own attorney's counsel. Kevin states that in granting a use variance, the first consideration is hardship, based upon its value as its current permitted use; it is not as simple as when considering an area variance.

Francine states the whole issue of wind energy seems to be a problem in this town. It is a government led directive that we seek alternative forms of energy. It is a means for the Shorts to be

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less dependent on the grid. Pam points out that the proposed system is not an independent one, that Shorts would lose their energy source the same as any of us in the event of a power outage. Francine points out that energy can be stored in batteries for such events. Kevin concurs that it would be difficult for anyone to install a wind energy device with our current law. Paul Gray says he takes exception to that statement. There are only 3 districts in which it is not allowed: hamlet, water residential, and water development. Kevin reiterates the 500 ft setback rule in the law.

Francine asks if this ruling is specific to Kendall. Paul Gray states any town bordering the lake has similarly written laws, and every town in Orleans County now has a document in place. She states that the document as written blocks 85% of residents from initiating a wind energy system. She states that her delivery charge exceeded electric usage last month. Kevin and Pam agree that she raises some valid points. This board will heed the legal advice of the town's attorney. Kevin states this is not the forum for debate of wind energy systems law. Pam agrees we all need to be seeking alternative forms of energy and this board does value Francine's opinion. Dave Schuth referenced a letter from Attorney Leone to Pam Rowles stating that procedure had not been followed. Pam states that she talked with Paul Gray who then talked with Don Short. Paul states the OCPB is our advisory board.

DECISION: The motion was passed by unanimous roll call vote, annulling the variance approval for Mr. & Mrs. Donald Short.

APPROVAL OF MINUTES: Minutes of 7/21/09 were reviewed. Kevin moved to accept with a minor correction. Seconded by Gay. All in favor. Approved.

TRAINING: September 9&16 re: SEQR process at Albion middle school. It is approved training.

CODE ENFORCEMENT: Larry states, at this time, there is nothing for this board next month. Inquiry regarding burned house in hamlet: Larry understands the owner, Marge Steffen, is waiting for the insurance company's check so she can pay for demolition. Larry has a letter drafted. Follow-up on Nauerth variance for a garage addition: framing inspection failed, but Larry expects the necessary adjustments will be made to comply. Larry had 3 cases in court last week: all were for excess vehicles: 1 dismissed, 1 tabled, 1 fined. Two of these cases will reappear August 31.

ADJOURNMENT: Pat moved to adjourn. Seconded by Kevin. All in favor. Adjourned at 7:40 p.m.

NEXT MEETING: Tuesday, September 15 at 7:00 p.m.

Respectfully submitted,

Marianne Wilson  
Recording Secretary